

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/5445

Re: Property at 1 Redheugh Avenue, Kilbirnie, KA25 7JL (“the Property”)

Parties:

Mr Charles Hamilton, 12 Kosti Palama Street, Tala 8577, Paphos, Cyprus (“the Applicant”)

Mr Paul Gallagher, Mrs Lucia-Bianca Gallagher, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 1 Redheugh Avenue, Kilbirnie, KA25 7JL under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 8 November 2019, a rent statement to 8 October 2024 showing arrears of £ 6400, a Notice to Leave with Recorded Delivery receipt dated 22 October 2024 and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. A Case Management Discussion (“CMD”) proceeded on 2 May 2025. After hearing from the Applicant’s representative it appeared to the Tribunal that neither of the Respondents would have had notification of the application and papers it was agreed that the CMD would be continued for service by advertisement to take place for both Respondents to allow the matter to proceed.
4. The application was thereafter served on the Respondents by advertisement in terms of Rule 6A of the Rules. A copy of the Executions of Service was received by the Tribunal administration and placed before the Tribunal.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 5 December 2025 by way of teleconference. Mr Hamilton from Eastwood Property Company Glasgow Ltd appeared for the Applicant. There was no appearance by or on behalf of the Respondents despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 8 November 2019, the rent statement to 8 October 2024 showing arrears of £ 6400, the Notice to Leave with Recorded Delivery receipt dated 22 October 2024 and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.
7. Mr Hamilton explained that the tenancy agreement had commenced in November 2019. In January 2024 he received an email from Mr Gallacher to advise that Mrs Gallacher was moving out of the Property. Rent was paid until April 2024. The Notice to Leave was served in October 2024 by which stage there were six months of arrears of £6400. On visiting the Property in October 2024 he spoke to a neighbour who thought that the property was now occupied by a young single woman who he thought was Mr Gallagher’s adult daughter. Mr Hamilton checked the electoral roll which shows that there is currently one registered voter at the property, Melissa Gallagher. He also visited the Property on 8 October 2025 and was approached by a neighbour

who advised there was no-one in the Property which appears to have been abandoned. Mr Hamilton advised no rent had been paid since April 2024 and arrears had now increased to £18 887.67.

Reasons for Decision

8. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
9. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).
10. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
11. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.
12. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 22 November 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondents on 22 October 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
13. The Tribunal considered the Respondents had not opposed the order for eviction. The Respondents' arrears were increasing and stood at £18 887.67. the monthly rent being £1000 with reference to the rent statement to 8 October 2024. However, Ground 12 is discretionary ground of eviction. As

well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

14. The Tribunal considered the issues set out in the application together with the documents lodged in support. Whilst the Applicant's letting agents had not lodged any pre-action letters to the Respondents, compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 is only one consideration for the Tribunal. The arrears were increasing with the last payment being in April 2024. The Respondents were no longer in the Property. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been served. Mr Hamilton advised this had been served on North Ayrshire Council. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Hamilton, that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.

15. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondents were in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

16. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

S Evans

5 December 2025

Legal Member

Date